IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

PRESENT
THE HON'BLE MR JUSTICE R.SUBHASH REDDY
WRIT PETITION NO : 10252 of 1998

Dated 12th December, 2006

Between
Nistala Kameswara Rao and anr

…Petitioners

and

Government of AP, Department of Horticulture,
Secretariat, Hyderabad, rep. By its Secretary and ors.

…Respondents.

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 102052 of 1998

ORDER:

In this Writ Petition, the petitioners seek direction by way of Writ of Mandamus to the respondents to deliver the possession of the land ad-measuring Ac.4.96 cents covered by R.S.No.355/1 situated in Kunchangi village of Anakapalli Mandal in Visakhapatnam District, or, in the alternative, to pay compensation for the damage caused by the removal of the trees.

In the affidavit filed in support of the Writ Petition, it is stated that the petitioners are the owners and possessors of the land to an extent of Ac.4.96 cents covered by R.S.No. 355/1,by virtue of their purchase by two registered sale deeds dated 23-6-1986 and 2-1-1987, respectively. It is stated that originally one Sri Pentreddy Pothuraju, S/o Arjun was the owner of the land in question and the same was

mortgaged to Anakapally Cooperative Agricultural Development Bank in the year 1970. As much as said Sri Pentreddy Pothuraju had not repaid the loan, the same was auctioned and the bank itself has purchased the property and obtained sale certificate from the office of the Registrar of the Cooperative Societies. However, subsequently, on the application filed by said Sri Pentreddy Pothuraju, the said property was released in his favour on paying the entire loan amount and subsequently it was sold to third parties, and, in turn, the petitioners have purchased by two registered sale deeds dated 23-6-1986 and 2-1-1987. It is their case that the third respondent, who is the Director of Horticulture, Visakhapatnam illegally encroached the land and sold the standing trees by way of auction, which fetched an amount of Rs.60,000/-. Precisely it is their grievance that they are the owners of the land in question by virtue of their purchase, and, the third respondent has no authority either to encroach the property or to sell the tree growth.

Separate counter affidavits are filed on behalf of the third respondent-Director of Horticulture, and fourth respondent-Mandal Revenue Officer.

In the counter affidavit filed on behalf of the third respondent, they have denied the encroachment of the property of the petitioners covered by R.S.No.355/1. It is stated that they are in possession of the land to an extent of Ac.8.90 cents covered by Sy. Nos. 353/2, 355/2, 359/1 and an extent of Ac.4.88 cents covered by Sy.No.353/1, pursuant to the allotment made by the District Collector, Visakhapatnam.

In the counter affidavit filed by the fourth respondent, it is stated that the land in question covered by Sy.No.355/1, which originally belonged to government was assigned to one Sri Pentreddy Pothuraju of Kunchangi village under Dharakhast rules and D-form patta was

granted with a condition not to alienate the property. It is further stated that originally the land was the part and parcel of Sy.No.322/4 of Kunchangi village, which was to the extent of Ac.133.50 cents and during survey settlement operation, the land covered by Sy.No.355/1 was carved out from the extent of Ac.133.50 cents. Further it is stated that as much as the land in question was sold to third parties in contravention of the condition in patta, proceedings were initiated under the provisions of the A.P. Assigned Lands (Prohibition of Transfers) Act 9 of 1977 (for short 'the Act'), and orders were passed cancelling the patta and the land was resumed to the government custody.

It is the case of the petitioners that the third respondent had illegally encroached the land belonged to them, but however, the third respondent had denied the possession of any part of the land covered by Sy.No. 355/1. So far as the counter affidavit filed on behalf of the fourth respondent is concerned, it is stated that for violation of the provisions of the condition of grant, proceedings were initiated under the provisions of the A.P. Assigned Lands (Prohibition of Transfers) Act 9 of 1977 and orders were already passed cancelling the patta and land was taken into custody. In view of the averment in the counter affidavit filed on behalf of the fourth respondent, keeping it open to the petitioner to assail the validity of the orders passed under the provisions of the A.P. Assigned Lands (Prohibition of Transfers) Act 9 of 1977, I dismiss the Writ Petition. No order as to costs.

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JUSTICE R. SUBHASH REDDY

DATE: 12-12-2006
Msnr.